

HOUSE BILL REPORT

HB 1531

As Reported by House Committee On:
Juvenile Justice & Family Law

Title: An act relating to waiver of counsel in juvenile proceedings.

Brief Description: Limiting the waiver of counsel in juvenile proceedings.

Sponsors: Representatives Moeller, Dickerson, Rodne and Roberts.

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 2/8/05, 2/16/05 [DPS].

Brief Summary of Substitute Bill

- Prohibits a juvenile from waiving his or her right to counsel in juvenile offender court proceedings unless the juvenile consults with counsel and the waiver is knowing and voluntary.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Dickerson, Chair; Moeller, Vice Chair; Lovick and Roberts.

Minority Report: Do not pass. Signed by 3 members: Representatives McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; and Crouse.

Staff: Sonja Hallum (786-7092).

Background:

Juveniles who are accused of criminal activity are provided essentially the same constitutional guarantees and procedural safeguards as adult defendants. One such right guaranteed to a juvenile who is charged with a criminal offense is the right to have an attorney appointed to represent the juvenile in court.

The juvenile court can appoint an attorney to represent a juvenile charged with a criminal offense, at no cost to the juvenile. A juvenile may waive his or her right to an attorney. The current Washington statutes do not set out requirements for waiver of counsel.

Under Washington case law, a court will review a waiver of counsel to determine whether the waiver was knowing and voluntary. The court will look to the circumstances surrounding the waiver and determine if the waiver was appropriate under the circumstances.

Summary of Substitute Bill:

The ability of a juvenile to waive his or her right to counsel in juvenile offender court proceedings is restricted. A parent is prohibited from waiving the child's right to the assistance of counsel.

A juvenile may only waive his or her right to counsel if the court finds that the juvenile has first consulted with an attorney and that the waiver is knowing and voluntary. When making his or her determination, the judge should consider the juvenile's school performance and any testing conducted by the school.

The court may only determine that the waiver was knowing and voluntary if the court questions the child on the record during a court hearing about the decision to waive the right to counsel and the court finds that the juvenile fully comprehends the following:

1. the nature of the allegations, the proceedings, and the range of allowable dispositions;
2. that counsel would be of valuable assistance in determining and presenting any defenses to the allegations in the petition, charge, or other mitigating circumstances;
3. that the right to the assistance of counsel includes the right to the prompt assignment of an attorney, without charge to the child or the child's parents if they are financially unable to obtain private counsel;
4. that even if the child intends not to contest the petition or charge, counsel may be of substantial assistance in developing and presenting material that could favorably affect the disposition; and
5. that among the child's rights at any hearing are the right to call witnesses on the child's behalf, the right to confront and cross-examine witnesses, the right to obtain witnesses by compulsory process, and the right to require proof of the elements of the charge or status offense.

If a juvenile appears at a hearing without an attorney the court must continue the case, unless the juvenile has previously waived his or her right to counsel in accordance with the revised requirements for waiver of counsel. This continuance, however, may not be a basis to hold the juvenile in detention.

Substitute Bill Compared to Original Bill:

The substitute restricts the waiver of counsel requirements to juvenile offender court proceedings.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support of original bill) This bill requires the waiver of counsel to be done in an open manner in court. Many kids are going into court with no attorney at all. A judge has taken a waiver from a twelve year old and allowed him to represent himself. This bill requires the court to be careful when it accepts a waiver. In many counties this is not a problem, because the kids get attorneys. But, in some counties the parents are told that if the child gets an attorney they will have to pay, so the parents waive the attorney.

Testimony Against: (Opposed to original bill) In most counties judges are trying to talk kids into getting attorneys. It is easier for the court. There is concern about the details in this bill such as the school records. There are privacy considerations to think about. There may be a tremendous expense. What is the effect on diversions?

Persons Testifying: (In support of original bill) Bob Boruchowitz, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Opposed to original bill) Greg Hubbard, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.